

1 Q You know early in the morning of
2 July the 31st -- and I'm now in the first page
3 of, Your Honor -- if I could just direct the
4 witness the bottom email on MASN Exhibit No.
5 106.

6 JUDGE SIPPEL: Yes.

7 MR. FREDERICK: In that email you
8 respond at 7:45 a.m. on July 31st, do you see
9 that, that is on the first page of the
10 exhibit, the very bottom?

11 THE WITNESS: Yes, I see it.

12 BY MR. FREDERICK:

13 Q And you say not talking about
14 within the DMA, the other regions, they have
15 a big territory, correct?

16 A Yes.

17 Q Sorry, I misspoke, the outer
18 regions, they have a big territory.

19 A Yes.

20 Q And in that you are comparing
21 MASN's territory to a prospective launch;
22 correct?

1 A Yes.

2 Q Now above that email chain is
3 highly confidential information about the
4 number of subs and where they are located,
5 correct?

6 A Yes.

7 Q And in that list Ms. Gaiski is
8 telling you in which MASN zone Comcast has a
9 certain number of subscribers; correct?

10 A Yes.

11 Q She gets to a total possible
12 service subs of [REDACTED], correct?

13 A Yes.

14 Q And this information is conveyed
15 to you in this email at approximately noon on
16 July the 31st, correct?

17 A Yes.

18 Q You finalized your proposal later
19 that day, correct?

20 A Yes.

21 Q So you -- you asked for a
22 clarification of the number of subscribers

1 within MASN's territory, correct?

2 A No, that isn't what I asked for.

3 Q The information that you got gave
4 you the number of subscribers for Comcast that
5 might be considered in a total possible
6 launch?

7 A Yes.

8 Q Is it a fact that the number,
9 [REDACTED], is in fact incorrect?

10 A I don't know what the subs were at
11 that point in time for Comcast back in '06.
12 I don't know if it was incorrect or not. It
13 looks like most of the DMAs are in here.

14 Q Is it a fact that on August the
15 4th, 2006, Comcast agreed to launch [REDACTED]
16 million -- sorry, [REDACTED] million subscribers?

17 A Yes.

18 Q And isn't it a fact that the
19 parties understood that approximately 150,000
20 would be carved off the launch at that time?

21 A No.

22 Q You don't agree that that's what

1 the parties understood?

2 A No, I don't agree with that.

3 Q Okay, we'll get into that a bit
4 later.

5 In this email Ms. Gaiski is giving
6 you a zone by zone analysis of what the subs
7 are in the launch; correct?

8 A Yes.

9 Q And you finalized Comcast's
10 proposal on that same day, correct?

11 A Yes.

12 Q You didn't call David Gluck until
13 the end of the day two days later on August
14 the 2nd, correct?

15 A I think that is right.

16 Q And in that conversation you
17 signaled the intent to do a deal, correct?

18 A Yes.

19 Q In that call you asked Mr. Gluck
20 to send you the term sheet that showed the
21 changes from the last term sheet he had sent
22 you the previous October, correct?

1 A Yes.

2 Q And Mr. Gluck promptly sent you
3 that term sheet that had been redlined,
4 correct?

5 A Yes.

6 Q The term sheet that had been sent
7 by counsel on July 25th, did not have the
8 redline changes, correct?

9 A I'm sorry, they had been sent by?

10 Q MASN's counsel or Comcast's
11 counsel on July 25th did not have redline
12 changes, correct?

13 A I guess that's right. I'd have to
14 look at it. I'm getting a little confused
15 with the documents, I apologize. Sorry, Mr.
16 Frederick.

17 Q When you got that term sheet, Alan
18 Dannenbaum immediately sent it off to the
19 various people we talked about already,
20 correct?

21 A Yes.

22 Q That's MASN Exhibit No. 108?

1 A Yes.

2 Q [REDACTED]

3 A [REDACTED]

4 Q [REDACTED]

5 [REDACTED]?

6 A [REDACTED]

7 Q [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]?

11 A [REDACTED]

12 Q [REDACTED]

13 [REDACTED] [REDACTED]

14 [REDACTED]

15 [REDACTED]?

16 A [REDACTED]

17 Q You were copied on those emails,

18 correct?

19 A Yes.

20 Q Your team did not send the list of

21 Schedule A for MASN to review until 1:30 p.m.

22 on August 4th, correct?

1 A Yes.

2 Q So even though you had finalized
3 Comcast's proposal on Monday, July the 31st,
4 you waited until Friday, August the 4th, to
5 send it to MASN; correct?

6 A No, we had discussions with them
7 over the days, the intervening days, leading
8 up to us giving them -- giving them a redraft
9 of the agreement. And we discussed the total
10 sub numbers that we would be willing to commit
11 to.

12 Q Mr. Bond, that doesn't answer the
13 question. The question I asked you was that
14 you had finalized your proposal on July the
15 31st, but you waited until Friday, August the
16 4th, to send Schedule A for MASN to review?

17 A Well, the two are not -- I think
18 you are establishing a linkage there that
19 doesn't necessarily exist. They sent us a
20 document. We got on the phone. We talked
21 about it. We negotiated a deal, and then we
22 did a markup of their agreement.

1 Q What was on the Schedule A that
2 MASN sent, Mr. Bond?

3 A I don't recall if it had a
4 Schedule A.

5 Q It was completely blank, wasn't
6 it, Mr. Bond?

7 A I don't have it in front of me.

8 Q The Schedule A was filled out by
9 Comcast, correct?

10 A In the markup that we sent back to
11 them, yes, it was filled out by Comcast.

12 Q Was Schedule A filled out on July
13 the 31st, 2006?

14 A I don't know when Schedule A was
15 actually prepared. I don't know if it was
16 prepared on July 31st. Reading this I doubt
17 that the system was -- had been prepared. I
18 think -- I think this what's referred to
19 herein is more of a -- was probably a bullet
20 point proposal. I don't think it was
21 contract, it doesn't appear to be a contract.
22 So I doubt that a system would have been part

1 of what Alan had sent. It would have been
2 more in terms of general parameters and
3 carriage and rates and whatnot with the
4 systems to be figured out later as part of the
5 negotiation which is what was happening with
6 respect to the --

7 Q Mr. Bond, all of that is very
8 interesting, and is nonresponsive to my
9 question. You finalized your proposal to MASN
10 on Monday, July 31st, correct?

11 That's what your direct testimony
12 says on paragraph 10.

13 A Yes.

14 Q Okay. And in that same day you
15 had gotten information about systems within
16 the footprint, correct?

17 A All I was saying is, I don't think
18 that that proposal had a system list on it.
19 I thought that was your question.

20 Q Your proposal was not transmitted
21 to MASN on July 31st, was it?

22 A No.

1 Q You didn't call MASN until two
2 days later, correct?

3 A Right.

4 Q So in your proposal either you had
5 a list of systems that you finalized on July
6 31st or you didn't. And all I want the Court
7 to know is what is the truth.

8 A I'm trying to respond to it. Over
9 this period, over these periods of days, we
10 were obviously trying to work toward a deal.
11 I think that the document, the quote proposal
12 that Alan is referring to here is really a
13 structure of discussion, a structure of what
14 we would propose to them, not a fully written
15 contract with a system list.

16 Obviously in the intervening days
17 we were working on agreeing to a system list
18 and a launch obligation. We had the
19 conversation with MASN, we sent them a
20 redraft.

21 MR. TOLLIN: Your Honor, I don't
22 think there's been a correct reading of the

1 testimony, the written direct testimony says
2 on July 31st - this is paragraph 10 --

3 JUDGE SIPPEL: I have it.

4 MR. TOLLIN: -- 2006 I finalized
5 my review of Comcast's proposal which would
6 form the basis of our negotiation strategy.
7 This is hardly a final proposal to transmit to
8 them. And this is a -- we have finalized my
9 review of the negotiation so we can get to a
10 negotiating strategy.

11 THE WITNESS: And that's really
12 consistent with what I was just saying.

13 MR. FREDERICK: Your Honor, the
14 word, finalized, meant something to Mr. Bond
15 when he wrote his direct testimony. My
16 questions simply are directed at understanding
17 what Mr. Bond meant when he said he finalized
18 his review.

19 BY MR. FREDERICK:

20 Q At that time, Mr. Bond, you had
21 not finalized a review of systems, had you?

22 A I don't think -- I think I had

1 some information relating to systems. At this
2 juncture we were just getting into the
3 negotiation with MASN, so I don't know that we
4 had the system list absolutely defined. It
5 would depend on the negotiation, much less --
6 much as we didn't have any of the other
7 elements of the deal.

8 Q Mr. Bond, did you have a list of
9 systems on Monday, July 31st, as a part of
10 your finalization of your review? Yes or no.

11 A Mr. Frederick, I think what I
12 testified to is I don't remember --

13 MR. FREDERICK: Your Honor --

14 JUDGE SIPPEL: Wait a minute.

15 MR. FREDERICK: -- I asked a yes
16 or no question. He either had it or he
17 didn't, and I just answered the witness to
18 answer the question, yes or no. If they want
19 to ask him more on --

20 JUDGE SIPPEL: All right, let's
21 try it again. Can you answer that question
22 yes or no?

1 THE WITNESS: I don't recall when
2 the system list was finalized.

3 BY MR. FREDERICK:

4 Q So when you finalized your review
5 it did not include a final system list,
6 correct?

7 A I said I don't recall when the
8 final system list was prepared.

9 Q It could have been prepared on
10 July the 31st, correct?

11 A It could have been.

12 Q But you didn't transmit it, if it
13 was finalized on July 31st, you did not send
14 it until Friday; correct?

15 A If it --

16 MR. TOLLIN: Your Honor, this is
17 complete speculation. I mean there is a
18 hypothetical embedded in his question.

19 JUDGE SIPPEL: Yes, I will
20 sustain the objection. I don't -- I don't
21 know how many ways you can go at this.

22 MR. FREDERICK: I think the

1 record speaks for itself.

2 JUDGE SIPPEL: I think so too.

3 BY MR. FREDERICK:

4 Q Mr. Bond, in your direct testimony
5 you state that MASN's representatives knew or
6 should have known that the unlaunched areas
7 were not being launched, correct?

8 A Yes.

9 Q But you never discussed those
10 areas with them, did you?

11 A I don't recall that I discussed,
12 specifically discussing unlaunched areas with
13 the MASN representatives when I did this, no.

14 Q And you didn't yourself know that
15 those systems were being omitted from the
16 schedule of systems to be launched until April
17 of 2007, correct?

18 A No, I don't think that is
19 accurate. I don't recall -- I don't recall
20 knowing there was an issue or dispute with
21 respect to Harrisburg until the first meeting
22 in April of '07. I do note that Harrisburg is

1 on this email, the Harrisburg DMA is on this
2 email that I received from Jen. But I just
3 don't have, with the passage of time I don't
4 recall specifically thinking about Harrisburg
5 when we were doing that agreement.

6 Q You never discussed Harrisburg
7 with the MASN representatives, did you?

8 A No, I think I said I don't recall
9 discussing any of the omitted systems with
10 MASN in a negotiation.

11 Q Mr. Bond, I'm asking you a series
12 of very precise questions, and I would like
13 you to answer the question I ask, please.

14 A Okay. I think your question was,
15 you said, I didn't discuss it -- you were
16 asking me a yes or no of that.

17 Q That's correct.

18 A And I'm answering you, I don't
19 recall discussing that. I can't say yes, I
20 can't say no. I don't recall discussing the
21 unlaunched systems with MASN representatives.

22 Q Did you discuss the Tri-Cities

1 area with MASN?

2 A I don't recall discussing the Tri-
3 Cities area with MASN.

4 Q Did you discuss the Roanoke-
5 Lynchburg systems with MASN?

6 A I don't recall discussing the
7 Roanoke-Lynchburg systems with MASN in that
8 timeframe.

9 Q You were surprised to learn that
10 there was an issue about Harrisburg in April,
11 2007, correct?

12 A I was surprised to learn they were
13 demanding launches, that they claimed the
14 contract had a mistake in it.

15 Q Your first response was that
16 Comcast had a contract, correct?

17 A Yes.

18 Q You didn't consider that in
19 Comcast's discretion was limited by its
20 nondiscrimination obligations, correct?

21 MR. TOLLIN: Your Honor, I'd like
22 a clarification of that question. Is that

1 asking for a legal conclusion?

2 MR. FREDERICK: He's a lawyer.

3 JUDGE SIPPEL: He is a lawyer.

4 MR. TOLLIN: He is not operating
5 as a lawyer for the company. He's operating
6 as a business person. He hasn't practiced law
7 for years. He isn't practicing law.

8 MR. FREDERICK: He read the
9 Adelphia order, Your Honor --

10 JUDGE SIPPEL: Well, that doesn't
11 mean he can't answer questions pertaining --
12 it's a mixed bag of fact and law. Can you
13 answer that question?

14 THE WITNESS: Can you state it,
15 please?

16 MR. FREDERICK: Sure.

17 BY MR. FREDERICK:

18 Q You did not consider in April,
19 2007 that Comcast's discretion was limited by
20 its nondiscrimination obligations; correct?

21 A Well, I think Comcast is limited
22 by whatever its legal obligations are. With

1 respect to MASN we weren't discriminating
2 against MASN. The launch was clear on the
3 launch obligation. And the response that I
4 gave to Mr. Rifkin in that meeting was related
5 to the contract. And that is how he posed it
6 to me.

7 Q You did not consider -- you
8 considered your discretion limited, correct?
9 Yes or no.

10 A No, what I said is, our
11 obligations -- our behavior is limited by the
12 law. I don't know if the discrimination
13 statute applied in this precise instance.
14 When we had the discussion around this it
15 related to the contract and what it said.

16 Q Mr. Bond, I asked you a simple
17 question. Your discretion was limited,
18 correct, yes or no?

19 A I think that is a very broad
20 question. I think our discretion is limited
21 by a number of factors.

22 Q So the answer is yes.

1 A Yes.

2 Q And one of the elements of that
3 limitation on Comcast's discretion is Federal
4 statutory law, correct?

5 A If it applies, we comply with the
6 law, yes.

7 Q And another limitation on
8 Comcast's discretion is federal regulatory
9 law, correct?

10 A Yes.

11 Q And you understand the difference
12 between federal statutory law and federal
13 regulatory law, correct?

14 A Yes.

15 Q Your second response to MASN was
16 that there was a lack of bandwidth; correct?

17 A I'm sorry, are you in the April
18 '07 time period?

19 Q Thank you, Mr. Bond, we are in
20 April of 2007, and your second response to
21 MASN is, we can't launch you because we lack
22 bandwidth; correct?

1 A Yes.

2 Q Isn't it a fact that in 2006
3 Harrisburg was at 750 megahertz?

4 A I don't know when Harrisburg was
5 rebuilt.

6 Q Isn't it a fact that in 2006
7 Roanoke-Lynchburg was at 750 megahertz?

8 A Portions of Roanoke-Lynchburg are
9 rebuilt. I don't know the exact dates that
10 they were rebuilt. But some portion of it is
11 rebuilt; that is correct.

12 Q Is it a fact that a substantial
13 number of the systems in Tri-Cities are at 750
14 megahertz?

15 A Some portion of the Tri-Cities
16 systems are at 750 megahertz.

17 Q Is it a fact that Comcast can
18 launch MASN at systems that are at least 550
19 megahertz?

20 A No.

21 JUDGE SIPPEL: What would your
22 limit be?

1 THE WITNESS: Well --

2 JUDGE SIPPEL: Can you give me a
3 direct answer on that?

4 THE WITNESS: Yes. We have all
5 of these services that we have to launch now
6 for high definition. And so even a 750
7 megahertz system doesn't have the bandwidth
8 right now. There are more services than
9 bandwidth right now, which is why we are
10 undergoing a process to convert the systems.

11 JUDGE SIPPEL: But that's not --
12 he asked you whether or not 550 was enough to
13 launch back in April of '07?

14 MR. FREDERICK: That's correct.

15 THE WITNESS: No, any 550 system
16 would have been bandwidth constrained, meaning
17 that they would not have had an open channel.
18 Can I state it that way? Is that better?
19 There is no blank channel in the system that
20 you could just put MASN on with no other
21 dislocation on the system. Is that better?
22 There is no blank channel in the system.

1 BY MR. FREDERICK:

2 Q Mr. Bond, I just want your
3 testimony to be very clear that in your
4 opinion a system that is at 550 is
5 insufficient to launch MASN; is that your
6 testimony?

7 A In analog. There can be limits,
8 there can be issues with respect to any
9 system, but generally a 550 system is channel
10 constrained. There are no blank channels.

11 JUDGE SIPPEL: Wait a minute, we
12 had testimony from Mr. Ortman yesterday, he
13 said 550 was okay; is that right? Did I
14 misquote him?

15 MR. TOLLIN: I think the probably
16 meant two different things.

17 JUDGE SIPPEL: That's what I'm
18 afraid of.

19 MR. TOLLIN: I think Mr. Ortman
20 was talking about the possibility of being
21 able to handle the bandwidth that MASN is
22 talking about. But that doesn't mean it was

1 an empty channel. He's talking about whether
2 there are any empty channels.

3 JUDGE SIPPEL: I know, I'm
4 hearing that too. So 550 is not -- what you
5 are answering, you seem to be -- for your
6 purposes of your answer, the 550 is
7 irrelevant. You are just saying that there
8 weren't channels there to launch on.

9 THE WITNESS: By and large there
10 are no blank channels --

11 JUDGE SIPPEL: Blank channels.

12 THE WITNESS: -- on Comcast
13 system.

14 JUDGE SIPPEL: Period, across the
15 board?

16 THE WITNESS: Pretty much across
17 the board. There are variations; we have
18 thousands of lineups, so there will be
19 variations in systems. But by and large we
20 don't have any blank channels on Comcast Cable
21 systems, even the ones that are rebuilt, and
22 definitely the ones that are 550. If you have

1 to launch something, that means you have to
2 take something else off. So I don't know what
3 Mr. Ortman said, but he may have said, if he
4 has to do something he might have to take
5 something off, or he might have to move it to
6 a different level of service. Or he might
7 have to create the space to launch.

8 MR. FREDERICK: His testimony --
9 the question I asked him, I can give it to
10 you, Your Honor, in the record space. I think
11 I am content with the record as it is. I
12 think the two witnesses disagree with each
13 other, and we will brief that in due course.
14 But I asked the specific question --

15 JUDGE SIPPEL: Wait a minute, I
16 didn't mean to cut off Mr. Tollin here.

17 MR. TOLLIN: Mr. Ortman I believe
18 was talking, was assuming that if we removed
19 channels we would have adequate bandwidth to
20 cover the two channels that MASN requires.
21 But he was just assuming we could move around
22 the channel lineup somehow to create the

1 space; 550 would work.

2 MR. FREDERICK: Your Honor, that
3 would be true for any bandwidth. If you take
4 something off, you can put something on.

5 JUDGE SIPPEL: Well, we'll just
6 have to let it go the way it is. We'll have
7 to let it go the way it is. But this answer
8 is a much more narrow answer if I'm hearing it
9 -- he's saying the channels were not there.
10 But you are saying about the whole area, this
11 whole shebang. So how can you promise to
12 launch within a certain timeframe if you have
13 to make -- you know, you have to have room.

14 THE WITNESS: That's correct.

15 BY MR. FREDERICK:

16 Q Mr. Bond, in -- let me just ask
17 you about 750 megahertz? Is 750 megahertz
18 sufficient to launch MASN?

19 A It depends on the individual
20 system. In this time period there may have
21 been systems that had blank channels on it.
22 This really is frankly beyond my role in the